

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

L. CARLYLE MARTIN, et al.,

Plaintiffs,

v.

USBANCORP [USBANK], et al.,

Defendants.

NO: CV-11-452-RMP

ORDER ON DEFENDANTS'  
MOTIONS TO DISMISS

Before the Court are Plaintiffs' motion to amend complaint, ECF No. 80; Bank of America's motion to dismiss, ECF No. 83; JP Morgan Chase Bank's motion to dismiss, ECF No. 91; and U.S. Bancorp's and US Bank National Association's motion to dismiss, ECF No. 94. The Court has reviewed all the motions, memoranda, and relevant filings and is fully informed.

**BACKGROUND**

On April 23, 2012, the Court dismissed the Plaintiffs' complaint without prejudice and with leave to amend. ECF No. 77. The dismissal was based on the complaint's failure to state a claim under Rule 8(a). The Court noted that the

1 Plaintiffs had drafted three complaints, all of which failed to state a claim. ECF  
2 No. 77 at 4.

3 On April 30, 2012, the Plaintiffs filed an amended complaint, ECF No. 82,  
4 along with the present motion for leave to amend complaint, ECF No. 80. On May  
5 3, 2012, and without leave of the Court, the Plaintiffs filed their “Amended  
6 ‘Second Amended Complaint.’” ECF No. 89. Bank of America, JP Morgan Chase  
7 Bank, U.S. Bancorp, and U.S. Bank National Association all moved to dismiss the  
8 complaint with prejudice for failure to state a claim. ECF Nos. 83, 91, 94. All of  
9 the motions to dismiss were noted for hearing on July 2, 2012, or July 3, 2012,  
10 without oral argument.<sup>1</sup> ECF Nos. 84, 92, 96. Mr. Martin did not file memoranda  
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12 <sup>1</sup>In a letter date July 10, 2012, Plaintiff L. Carlyle Martin communicated that  
13 he received no notice about any hearing held on July 2, 2012. ECF No. 106. First,  
14 the Court clarifies for the record that no in-person hearing occurred at the courthouse  
15 regarding the pending motions to dismiss on July 2, 2012. The hearings were noted  
16 without oral argument, and the “hearing date” serves primarily as a date by which  
17 the motion becomes “ripe” for determination by the Court. Second, the court record  
18 reflects that notice of both July 2, 2012, hearings was sent to Mr. Martin’s address  
19 on file: 5630 North Greenwood Blvd., Spokane, Washington, 99205. ECF Nos. 84  
20 at 4, 92 at 3. Furthermore, the Court concludes that the issues raised by the motion  
required no oral argument. LR 7.1(h)(3)(b)(iv).

1 in opposition to any motion nor request any additional time in which to file a  
2 response.

### 3 **APPLICABLE LAW**

4 A complaint must contain “a short and plain statement of the claim showing  
5 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). In reviewing the  
6 sufficiency of a complaint, a court accepts all well-pleaded allegations as true and  
7 construes those allegations in the light most favorable to the non-moving party.  
8 *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (citing  
9 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031-32 (9th Cir.  
10 2008)).

11 “To survive a motion to dismiss, a complaint must contain sufficient factual  
12 matter, accepted as true, to ‘state a claim of relief that is plausible on its face.’”  
13 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v.*  
14 *Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the  
15 plaintiff pleads factual content that allows the court to draw the reasonable  
16 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing  
17 *Twombly*, 550 U.S. at 556). However, “[r]ule 8(a) ‘does not impose a probability  
18 requirement at the pleading stage; it simply calls for enough fact to raise a  
19 reasonable expectation that discovery will reveal evidence’ to support the  
20 allegations.” *Starr v. Baca*, 652 F.3d 1202, 1214 (9th Cir. 2011) (quoting

1 *Twombly*, 550 U.S. at 556).

2 A court has a duty to construe pro se pleadings liberally. *Hebbe v. Pliler*,  
3 627 F.3d 338, 342 (9th Cir. 2010). Accordingly, a court must give a pro se  
4 plaintiff the benefit of the doubt and not hold the pro se plaintiff to the same  
5 standards as apply to formal pleadings drafted by lawyers. *Id.* This duty holds true  
6 even after the United States Supreme Court's decisions in *Iqbal* and *Twombly*. *Id.*  
7 at 342 n.7. However, although a court must construe a pro se complaint liberally,  
8 that does not relieve the pro se plaintiff from the need to plead specific facts  
9 establishing the elements of a cause of action. *Ivey v. Bd. of Regents of Univ. of*  
10 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

## 11 DISCUSSION

12 As an initial matter, when Plaintiffs filed their second amended complaint,  
13 the Plaintiffs contemporaneously filed a motion for leave to file that complaint.  
14 ECF No. 80. However, the Court had already granted the Plaintiffs leave to amend  
15 their complaint. ECF No. 77 at 5. Accordingly, the Plaintiffs' motion for leave to  
16 amend is moot.

17 The Defendants challenge the sufficiency of the amended complaints filed  
18 by the Plaintiffs. The allegations of wrongdoing contained in Plaintiffs' second  
19 amended complaint, ECF No. 82, read verbatim as follows:

- 20 8. Plaintiffs are, and at all times herein mentioned were, United States American citizens and consumers who in the securitization process of 200 Coyote Lane, Castle Rock,

1 Washington 98611, were defrauded intentionally by  
2 defendant(s) and cause irreparable harm

3 a. Plaintiffs' are *judicially* promised the fullest *legal* protection  
4 in their claims.

5 9. Plaintiffs allege, on information and belief, that defendant(s)  
6 [and each of them], were unjustly enriched in the securitization  
7 adversity to Plaintiffs' herein.

8 a. Plaintiffs are *officially* promised protection in and through  
9 the *judicially equal rights' protection(s)*.

10 10. Plaintiffs therefore seek complete transparency to defendant(s)'  
11 securitization profits unjustly enriching defendant(s) herein.

12 ECF No. 82 at 2-3 (emphasis and alterations in original). The Plaintiffs seek a  
13 declaration that they hold title to a parcel of real property in Castle Rock,  
14 Washington, an injunction precluding Defendants from claiming title in said  
15 property, damages, and costs. ECF No. 82 at 3. Plaintiffs' allegations in their  
16 "Amended Second Amended Complaint" are identical. ECF No. 89.

17 As the Court noted in its prior order dismissing the case, "a complaint must  
18 allege specific facts stating a plausible cause of action." ECF No. 77 at 4 (citing  
19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). It is not enough to state conclusions  
20 of liability. ECF No. 77 at 4. Here, however, the amended complaints allege that  
Plaintiffs were "defrauded" causing "irreparable harm" and "unjust enrichment."  
ECF No. 82 at 2. The complaints do not provide any specific facts that would  
explain what Plaintiffs believe constituted fraud. Even if the Court were to infer  
that the alleged irreparable harm and unjust enrichment related to a transfer of title

1 of the Castle Rock property, the complaints nowhere explain why transfer of title  
2 was wrongful. Accordingly, the Plaintiffs have failed to state a claim upon which  
3 relief may be granted and the complaint should be dismissed.

4 In the previous order, the Court warned the Plaintiffs, due to the number of  
5 previous futile attempts by Plaintiffs to amend their complaint, that the Court  
6 would allow only one more amendment attempt. ECF No. 77 at 4. In light of the  
7 amended complaints' absence of allegations of any specific facts to support this  
8 lawsuit, the Court finds further amendments would be futile. Additionally, further  
9 amendments would prejudice the Defendants by forcing them to expend funds to  
10 defend against amended complaints that do not state a claim. Accordingly, the  
11 Court finds that dismissal in this case should be with prejudice.

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. The Plaintiffs' motion to amend, **ECF No. 80**, is **DENIED AS MOOT**.  
14 2. The Defendants' motions to dismiss, **ECF Nos. 83, 91, 94**, are  
15 **GRANTED**.  
16 3. The above-captioned complaint is **DISMISSED WITH PREJUDICE**  
17 without costs or fees to either party.

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**IT IS SO ORDERED.**

**DATED** this 24th day of September 2012.

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